Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1877

NORMAN GLATSTEIN,

Petitioner,

—against—

WILLIAM WALSH, JR.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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(212) RE 4-5262

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I. Notice is hereby given that Norman Glatstein, the plaintiff above named, hereby appeals to the Supreme Court of the United States from the order affirming the judgment of the District Court of September 26, 1973, entering this action on March 21, 1974.

This appeal is taken pursuant to 28 U.S.C. §1254.

II. The following questions are presented by this appeal:

A. Whether perjured testimony, on a salient issue, can be used as a basis of a decision?

B. Whether, when there is a statutory grant of a trial by jury, that waiver of this grant may be presumed?

C. Whether a trial judge can arbitrarily restrict the introduction of testimony to only one party in a trial and the second party may not introduce testimony unless brought up by the first?

D. Whether, when there are available witnesses, and there is a requirement for "conclusive" evidence, that these witnesses should not be asked to testify?

E. Whether a "tacit" admission can be used as a basis of a decision?

F. Whether, in a substantive state issue, the Federal Court can accept the interpretation of the law of the state by State Attorney General, rather than the highest court of the state?

G. Whether a state Judge can make an important ruling in his conduct of a trial, but change this interpretation when a charge is brought against him?

H. Whether, in a private civil action, where the decision is enforced by the state, and the state maintains a system of courts to enforce these actions, that the conduct of these trials are exempt from due process of law as guaranteed by the 14th Amendment?

I. Whether as a matter of elementary fairness, that a plaintiff, appearing pro se, should not be given a chance to amend his complaint, if a necessary party was not introduced?

J. Whether the Court of Appeals can ignore a recent Supreme Court Decision, which contradicts an essential point in defendant's defense?

In the courts below it was ruled and upheld by the District Court and Court of Appeals that divorce in New York State is a private civil action, that it does not occur under color of state law and therefore the 14th Amendment and other constitutional guarantees do not apply in the conduct of the trial.

(a) The courts below also did not allow for an amended complaint when a possible necessary party was left out of the original complaint.

(b) The date of the judgment that is sought to be reviewed is March 21, 1974 in the United States Court of Appeals for the Second Circuit and the jurisdiction of this Court is asked for through 28 U.S.C. §1254.

(c) Questions presented, please see pp. 1, 2.

(d) The appeal is being brought because of a violation of the 6th, 7th, 8th, 14th Amendments causing a violation of the plaintiff's civil rights. The jurisdiction of the Federal Court lies in 42 U.S.C. §1983 and 28 U.S.C. §1343.

(e) The above case came to the federal court, after a divorce action in New York State, conducted by Mr. Walsh as the judge in the trial. Mr. Walsh admits the events which were enumerated in the questions (except for questions F, H, I, and J which were events in the litigation below). Mr. Walsh contends that divorce actions in New York State are private civil actions and are not under color of state law and therefore the 14th Amendment does not apply.

It is contended by the plaintiff that the Court of Appeals in New York State has ruled that divorce in New York State is not a private civil action (see Corpus Juris Secundum, Vol. 27a, #7, 8, 92, which refers to many New

York State decisions on this subject), that the decision of the highest state court and not the New York State Attorney General's Opinion should be binding on the federal court.

In Mr. Walsh's conduct of the trial he particularly noted that divorce was statutory in New York State and was not a private civil action.

The thrust of a recent Supreme Court case, *Boddie* v. *Conn.*, 1971 S. Ct. 780 is that divorce takes place under color of state law.

Furthermore, it has been ruled in the past by the Supreme Court that even in private civil disputes, if these disputes are enforced by state action, that the 14th Amendment applies, *Shelly* v. *Kraemer*, 1948, 334 U.S. 1, 68 S. Ct. 836.

Therefore, no matter what approach is considered, a divorce action must be conducted under the safeguards of the 14th Amendment. The results of a divorce action in New York State are enforced by the courts and the state, in fact, maintains a separate court system to enforce them. The defendant now argues that this whole system should be exempt from the 14th Amendment.

(f) The basis for federal district court jurisdiction in this case is 28 U.S.C. §1343 and 42 U.S.C. §1983.

The appellant in the interest of brevity and economy has submitted the above major references for his contention. He has compiled an extensive bibliography of cases to further bolster his argument.

He would like to emphasize that the major complaints, namely the use of perjured testimony, tacit admission,

denial of a jury trial, restriction of the introduction of testimony are admitted.

(g) Opinion of the District Court (Judge MacMahon):

This is a motion by the defendant to dismiss the complaint for failure to state a claim upon which relief may be granted and failure to join an indispensable party. Rules 12(b)(6), 12(b)(7), Fed. R. Civ. P.

Invoking jurisdiction under the Civil Rights Acts, 28 U.S.C. 1343 and 42 U.S.C. 1983, plaintiff alleges that the defendant, a Justice of the Supreme Court of the State of New York, Westchester County, deprived him of his due process rights under the Fourteenth Amendment, subjected him to cruel and inhuman punishment in violation of the Eighth Amendment, and denied him a jury trial.

It appears that the plaintiff was sued for divorce on the ground that he had subjected his now ex-wife to cruel and unusual treatment, thereby endangering her physical and mental well being so as to make it unsafe and improper for her to live with plaintiff. N. Y. Domestic Relations Law 170(1) (McKinney 1964). Apparently plaintiff never demanded a jury trial, and following a non-jury trial before defendant, plaintiff's ex-wife was awarded a judgment of divorce. The defendant Justice wrote a careful opinion. Plaintiff appealed but the judgment was affirmed without opinion. *Glatstein* v. *Glatstein,* 37 A.D.2d 917 (1971). Leave to appeal to the Court of Appeals was denied. 29 N.Y.2d 486 (1971).

The acts complained of here arose during the state trial. In substance, plaintiff alleges that perjured testi-

mony was admitted into evidence, that proffered testimony to rebut his ex-wife's testimony was excluded, that a tacit admission was used as evidence, that there was no showing that his ex-wife's health was impaired, that extraneous testimony was admitted, and that he was only given six hours' visitation rights with each of his children. Patently, these allegations are insufficient.

Neither mere errors nor irregularities in a state court proceeding, nor the loss of a private civil action due to such alleged irregularities are sufficient to support a claim for violation of a Civil Rights Act or denial of constitutional rights. *Skolnick* v. *Spolar,* 317 F.2d 857 (2d Cir. 1963).

We find it unnecessary to discuss the other points raised by defendant. In any event, plaintiff's ex-wife is an indispensable party, and he has not been joined in this action.

Accordingly, defendant's motion to dismiss the complaint for failure to state a claim for relief and for failure to join an indispensable party is granted in all respects.

So ordered.

Dated: New York, N. Y.
Sept. 26, 1973

LLOYD F. MACMAHON
United States District Judge

The subsequent judgment of the Court of Appeals upheld the District Court's dismissal of the complaint.

The appellant emphasizes that the complaints enumerated, acceptance of perjured testimony, the lack of evidence of waiving a jury trial, restriction of testimony, use of a tacit admission, the changing of Judge Walsh's opinion in my trial and the present litigation on whether divorce occurs under color of state law all remain undenied. It is contended that they violate the due process of law clause of the 14th Amendment and that they are not "patently insufficient." As a lay person I have the idea that if one takes an oath to tell the truth, one is supposed to. As this decision stands, perjury appears to be a proper legal tactic in a large segment of litigation in the United States. I feel that this alone merits consideration by the highest court in the country.

The appellant respectfully requests that the Supreme Court of the United States grants his request for a Writ of Certiorari so that the case can be considered in full.

Dated: June 12, 1974
New York, New York

Respectfully submitted,

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APPENDIX

Statutes and Regulations Involved

Federal District Court Southern District of New York: 73 Civ. 2655. United States Court of Appeals, 2nd Circuit, 73-2632. Pertinent phrases: 28 U.S.C. 1343, to redress the deprivation, under color of State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution . . .

Amendment 14: No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; . . .

42 U.S.C. 1983: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit inequity, or other proper proceeding for redress.